

SENATE RECORD VOTE ANALYSIS

106th Congress
2nd Session

Vote No. 107

May 24, 2000, 3:11 p.m.
Page S-4364 Temp. Record

SMITH NOMINATION/Member of the Federal Election Commission

SUBJECT: Nomination of Bradley A. Smith, of Ohio, to be a Member of the Federal Election Commission. Confirmation.

ACTION: NOMINATION CONFIRMED, 64-35

SYNOPSIS: Bradley A. Smith was born April 5, 1958, in Wyandotte, Michigan. He received a B.A. from Kalamazoo College in 1980 and a J.D. from Harvard Law School in 1990. His employment history includes the following: 1980-1981, Political Director (1980) and General Manager (1981), Small Business Association of Michigan; 1981-1983, Foreign Service Officer, United States Department of State; 1983-1985, Director of Marketing, IBA Health & Life Assurance Company; 1986-1987, Senior Consultant, VHA Consulting Services; 1988-1989, Summer Law Clerk, Orr & Reno; 1990-1995, Associate Attorney, Vorys, Sater, Seymour & Pease; 1993-present, Law Professor, Capital University Law School.

Those favoring confirmation contended:

Argument 1:

The Federal Election Commission (FEC) enforces Federal election laws. It is designed to be a bipartisan commission, with three Republican and three Democratic members. Presidential nominees are presented in pairs and are made in consultation with the leadership of the two parties. It is generally understood that each party is given the opportunity to propose its preferred candidate to the President, who in turn officially nominates that individual. Bradley Smith was nominated in this fashion for the open Republican seat on the FEC. He is a highly intelligent and highly ethical First Amendment election law scholar with a respect for the law, even for laws with which he does not agree. Professor Smith, like nearly every member of this body, opposes the current status of campaign finance laws, and feels that those laws must be changed. The opposition to his confirmation arises from his disagreement with Democrats on how those laws should be changed. Professor Smith believes that there should be no campaign

(See other side)

YEAS (64)			NAYS (35)			NOT VOTING (1)	
Republicans (54 or 98%)		Democrats (10 or 23%)	Republicans (1 or 2%)		Democrats (34 or 77%)	Republicans (0)	Democrats (1)
Abraham	Helms	Baucus	McCain	Akaka	Kerrey		Biden ²
Allard	Hutchinson	Breaux		Bayh	Kerry		
Ashcroft	Hutchison	Bryan		Bingaman	Kohl		
Bennett	Inhofe	Dodd		Boxer	Landrieu		
Bond	Jeffords	Graham		Byrd	Lautenberg		
Brownback	Kyl	Inouye		Cleland	Levin		
Bunning	Lott	Leahy		Conrad	Lieberman		
Burns	Lugar	Moynihan		Daschle	Lincoln		
Campbell	Mack	Reid		Dorgan	Mikulski		
Chafee	McConnell	Torricelli		Durbin	Murray		
Cochran	Murkowski			Edwards	Reed		
Collins	Nickles			Feingold	Robb		
Coverdell	Roberts			Feinstein	Rockefeller		
Craig	Roth			Harkin	Sarbanes		
Crapo	Santorum			Hollings	Schumer		
DeWine	Sessions			Johnson	Wellstone		
Domenici	Shelby			Kennedy	Wyden		
Enzi	Smith, Bob						
Fitzgerald	Smith, Gordon						
Frist	Snowe						
Gorton	Specter						
Gramm	Stevens						
Grams	Thomas						
Grassley	Thompson						
Gregg	Thurmond						
Hagel	Voinovich						
Hatch	Warner						

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

contribution limits and that the Federal Election Campaign Act (FECA) should be overturned. Democrats support further contribution limitations. The major myth our Democratic colleagues are promoting is that Professor Smith's "radical" beliefs conflict with what the courts have stated about campaign financing and that those beliefs consequently disqualify him for service on the FEC. They could not be more wrong.

First, campaign contributions have been found to be free speech that is protected by the First Amendment. In 1974 Congress passed FECA (an Act that placed sweeping restrictions both on campaign contributions and expenditures) in an attempt to limit political speech, but the law was quickly challenged, and large parts of it were struck down as unconstitutional. In the 1976 *Buckley v. Valeo* decision, the Supreme Court correctly decided that both political contributions and expenditures involve free speech and cannot be limited unless the least restrictive means are used and the limitations are necessary to serve a compelling government interest. It found no justification for involuntary limits on expenditures: it said that trying to equalize speaking power was "wholly foreign to the First Amendment." Only totally voluntary limits on expenditures, which the Government could encourage with its own generous donations, were held to be constitutional. On contributions, it decided that giving assistance implicates lesser speech interests because it merely facilitates, or associates the contributor with, the speech of the candidate. Thus, the bar for limiting contributions is lower. It further found that the Government's interest in preventing corruption or the appearance of corruption justifies placing limits on the size of contributions that may be given to candidates or groups that engage in express advocacy, but not those that engage in issue advocacy. The Court drew a razor-sharp distinction between issue advocacy and express advocacy. Opponents of Professor Smith support strict limits on all contributions to political parties, but those limits are of questionable constitutionality. The Supreme Court ruling in *Colorado Republican Federal Campaign Committee v. FEC* (116 S.Ct. 2309 (1996)) established that a party can act independently to work for the election or defeat of a candidate. That principle leads to the conclusion that if the party acts independently of the candidate, then any claim of corruption is diminished.

Second, if the views of our nominee disqualify him from serving on the Commission because they are not in harmony with current election law, then all nominees who support changing the FECA ought to be disqualified from serving. Do those who oppose a nominee merely because he opposes current law support the status quo? Such a conclusion, though seemingly logical, is in marked contrast to the goals of "reformers" who desire to increase contribution limits; it seems that "reformers" only want to see a change in the FECA if it supports their particular views on campaign finance.

Sadly, opponents of Professor Smith are ignoring years of goodwill on both sides of the aisle that have allowed each party the privilege of nominating its FEC candidates. We are confident that well-meaning Senators on both sides will remember that this bipartisan agency is supposed to have three Democrats, picked by Democrats, and three Republicans, picked by Republicans. We urge our colleagues to support the nomination of Professor Smith.

Argument 2:

Professor Smith is a highly ethical and educated individual with an exceptional understanding of Federal election law. Though we heartily disagree with his views on campaign finance, we believe he will serve well on the FEC. More importantly, we understand the comity that should be involved in FEC nominations. We do not expect advocates of Professor Smith's campaign finance views to support the campaign finance views of our nominee to the FEC, on whom we will vote next, but we do expect that they will respect our decision on a Democrat nominee. We urge all Senators to support Professor Smith's nomination, thereby supporting the prerogatives of the parties to nominate their preferred candidates.

Those opposing confirmation contended:

Congress passed FECA in 1974 to limit the amount that any one source could give to a candidate and to limit the amount that could be spent on behalf of a candidate. That law only stood for 2 years before the Supreme Court's *Buckley v. Valeo* decision. That decision basically upheld limiting the amounts that could be contributed to candidates but said that the amounts spent by or on behalf of candidates could not be limited. That decision began a gradual erosion of the FECA limits on money in campaigns. The average cost of running for Federal office, as a result, has gone up severalfold since 1976. At one time, the Senate scheduled its fundraisers around its legislative activities; now it commonly schedules its legislative activities to make sure they do not conflict with its fundraisers. Additionally, this spending does not affect any of the "independent" spending that comes from political parties and other groups. Americans are increasingly disgusted with elected officials chasing after money. They believe that politicians now represent the special interests that spend money to get them elected instead of the vast majority of the American people. Our colleagues say they do not want to restrict spending because they are worried about preserving democracy; we believe that it is our failure to enact a campaign finance reform bill that is destroying democracy. We cannot support a nominee like Professor Smith who desires to return the country to a time before FECA when lobbyists toted bags of cash around the capital in order to influence elected officials. It would be wrong to confirm him to a position in which he would have to enforce laws he believes should be overturned.